

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BAUMAN, Minors.

UNPUBLISHED
January 23, 2014

No. 317141
St. Clair Circuit Court
Family Division
LC No. 11-000079-NA

Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating his parental rights to his twin daughters, A.A. and A.C. The trial court found that there was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i) (parent caused sexual abuse and reasonable likelihood of future abuse), (g) (failure to provide proper care or custody), (j) (reasonable likelihood that child will be harmed), and (k)(ii) (criminal sexual conduct involving penetration). The court also found that termination was in the best interests of the children. We affirm.

I. FACTUAL BACKGROUND

A.A. reported that her father, respondent, sexually abused her. During subsequent interviews, A.A. disclosed that the sexual abuse was not a one-time event, but was reoccurring. The trial court found that there was probable cause that one or more of the allegations in the petition were true, and that it was contrary to the welfare of the children to remain in the home. Thus, the trial court authorized the petition, and found that reasonable efforts at reunification were not required for respondent.

At the termination hearing, A.A. testified that when she was 13 years old on October 29, 2012, she returned home after attending a program relating to an unrelated juvenile charge. She sat on the couch watching television with respondent, and her brother was sleeping in his room. According to A.A., respondent then pushed her, and tried to kiss her on the lips. While A.A. tried to stop him, he persisted. Respondent ordered A.A. to go to her room, and because she was scared, she obeyed his command. Respondent followed her into the room, ordered her to remove her pants and underwear, and inserted his penis into her vagina. After he was finished, he told A.A. that if she told anyone, he "would do worse." A.A. did not tell her mother what happened because she was scared.

A.A. testified that respondent had sexually assaulted her before, beginning when she was seven years old. She denied claiming that respondent had forced her to perform oral or anal sex. A worker at the St. Clair County Juvenile Center testified that approximately 10 days after the October 29th assault, A.A. stated that respondent had sexually abused her while tucking her into bed. The supervisor at this facility testified that A.A. confirmed these allegations in a conversation with him, and pointed to her mouth and genital region when indicating where respondent assaulted her.

A Child Protective Service (CPS) worker testified that she believed respondent posed a risk to A.A.'s twin sister, A.C., because they were the same age, A.A. now was out of the home, and A.C.'s failure to disclose any similar abuse did not mean that such abuse had not occurred. Thus, the CPS worker believed that returning both children to the home would place them in danger. While the worker also stated that A.A. claimed that she was forced to perform oral sex on respondent, the CPS worker clarified that A.A. believed that term referred to "kissing like adults." The worker also testified that respondent violated the safety plan when he was at the residence after he was instructed to stay away from that location.

The trial court found that termination was warranted under MCL 712A.19b(3)(b)(i) (parent caused sexual abuse and reasonable likelihood of future abuse), (g) (failure to provide proper care or custody), (j) (reasonable likelihood that child will be harmed), and (k)(ii) (criminal sexual conduct involving penetration). The court also found that termination was in the children's best interests. Respondent now appeals.

II. TERMINATION OF PARENTAL RIGHTS

A. STANDARD OF REVIEW

We review for clear error a trial court's determination that a statutory ground has been proven by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

B. MCL 712A.19b(3)(b)(i)

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). In the instant case, the trial court found that there was clear and convincing evidence of MCL 712A.19b(3)(b)(i), which provides for termination when "[t]he child or a sibling of the child has suffered physical injury or physical or sexual abuse" and "[t]he parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home."

In the instant case, A.A. testified that respondent forced her to engage in sexual intercourse on October 29, 2012, and had sexually abused her multiple times in the past beginning when she was seven years old. Though there were minor inconsistencies in A.A.'s statements, the pertinent part of her story remained the same, namely, that respondent forced her

to have sexual intercourse with him on October 29, 2012. Respondent highlights these inconsistencies and claims that A.A. lacked credibility because her brother was supposedly home when the assault occurred and she did not immediately tell her mother. Yet, A.A. testified that her brother was sleeping apart from them in his room, and respondent does not explain why A.A.'s brother's presence makes it impossible that the sexual abuse occurred. Further, A.A.'s choice not to tell her mother immediately after the assault does not prove, one way or the other, whether the abuse actually occurred. A.A. also testified that she withheld that information from her mother because she was scared.

Essentially, respondent is merely asserting a credibility challenge on appeal. As we have previously recognized, when a respondent denies sexually abusing children but the trial court believes the testimony of the children, "it is not for this Court to displace the trial court's credibility determination." *In re HRC*, 286 Mich App 444, 460; 781 NW2d 105 (2009). Further, a respondent's treatment of one child "is probative of how he will treat their other siblings." *Id.* at 460-461. Thus, respondent's sexual abuse of A.A. is probative of the danger A.C. would face if returned to the custody of respondent.

Accordingly, the trial court properly found that MCL 712A.19b(3)(b)(i) was proven by clear and convincing evidence.

C. MCL 712A.19b(3)(g) and (j)

The court also correctly found that MCL 712A.19b(3)(g) and (j) were proven by clear and convincing evidence.¹ MCL 712A.19b(3)(g) provides that termination is proper when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(j) provides for termination when "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

Here, the evidence adduced at the termination hearing supported the trial court's finding that respondent had sexually abused A.A. Moreover, when a parent sexually abuses the child involved in termination proceedings, that parent has failed to provide proper care or custody. *In re Vasquez*, 199 Mich App 44, 52; 501 NW2d 231 (1993). As noted, the trial court found A.A.'s account of the sexual abuse credible in all significant respects. Furthermore, given the evidence that this was not an isolated occurrence but was a continual pattern of sexual abuse beginning when A.A. was seven years old, the trial court did not err in finding that respondent would not be able to provide proper care and custody of A.A. in the future, MCL 712A.19b(3)(g), or that there was a reasonable likelihood that A.A. would be harmed if returned to respondent's care, MCL 712A.19b(3)(j).

¹ Even if these statutory grounds only apply to A.A., the trial court properly terminated respondent's parental rights to A.C. pursuant to MCL 712A.19b(3)(b)(i), discussed *supra*, and MCL 712A.19b(3)(k)(ii), discussed *infra*.

Accordingly, respondent has not demonstrated that the lower court, with its special opportunity to observe the witnesses, clearly erred in finding that termination of respondent's rights under MCL 712A.19b(3)(g) and (j) was supported by clear and convincing evidence.

D. MCL 712A.19b(3)(k)(ii)

Lastly, the trial court properly found that termination was proper under MCL 712A.19b(3)(k)(ii), which provides for termination when "[t]he parent abused the child or a sibling of the child," including "[c]riminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate."

The lower court found that respondent sexually abused A.A., which constituted criminal sexual conduct involving penetration. In the findings of fact by the referee, adopted by the trial court, A.A.'s testimony was found to be credible in all significant respects. A.A. testified that respondent sexually abused her, which included vaginal intercourse and penetration. Further, the language of the statute extends to termination of respondent's rights to A.C., as she is A.A.'s sibling.

Accordingly, the trial court properly found that MCL 712A.19b(3)(k)(ii) was proven by clear and convincing evidence.

III. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent also challenges the trial court's best interest determination. "Whether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. We review for clear error a trial court's determination that termination is in the child's best interests. *In re Olive/Metts Minors*, 297 Mich App at 40. "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App at 264.

B. ANALYSIS

Respondent contends that termination was not in the children's best interests because the CPS worker's testimony and A.A.'s testimony were not credible. We disagree.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In determining the child's best interests, the court may consider a child's bond to the parent, the respondent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re Olive/Metts Minors*, 297 Mich App at 41-42.

Here, respondent contends that the evidence at the hearing was not credible because the CPS worker did not conduct a thorough investigation, A.A. refused to testify during prior

termination proceedings, and there were no allegations that respondent sexually abused A.A.'s twin sister, A.C. However, this again is merely a challenge to the credibility of the evidence. The referee, who had a special opportunity observe the witnesses in court, found that A.A. had provided a credible account of respondent's sexual abuse. Therefore, regardless of the thoroughness of the investigation or the lack of allegations from A.C., the evidence demonstrated that respondent sexually abused one of his biological children. There also was no testimony regarding respondent's parenting ability. Further, A.A. had a need for permanency, stability, and finality, which would be best served in a home where she did not fear further sexual abuse from respondent.

The court's finding that termination was in A.C.'s best interests also is not clearly erroneous. While the referee found that A.C. had a strong bond with respondent, it also found that respondent had sexually abused A.C.'s twin sister. Further, this sexual abuse repeatedly occurred in the family home, beginning when A.A. was seven years old. A.C.'s continued residence with respondent would subject her to significant risks of sexual abuse from respondent, especially if A.A. was removed from respondent's power.

Accordingly, the court did not clearly err in finding that termination was in the children's best interests.

IV. CONCLUSION

The trial court properly found the statutory grounds for termination, MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii), had been proven by clear and convincing evidence and that termination was in the children's best interests. We affirm.

/s/ Cynthia Diane Stephens

/s/ Michael J. Kelly

/s/ Michael J. Riordan